

REPORT
of the
Muslim Public and Charitable
Waqf Committee
United Provinces



ALLAHABAD :
THE SUPERINTENDENT, PRINTING AND STATIONERY, UNITED PROVINCES
1932

GOVERNMENT OF THE UNITED PROVINCES.

No. 2478/IX—367.

LOCAL SELF-GOVERNMENT DEPARTMENT.

Dated January 30, 1932.

RESOLUTION.

READ.—

Reports of the United Provinces Muslim Public and Charitable Waqf Committee appointed to advise what steps should be taken for the better governance, administration and supervision of Public and Charitable Waqfs (auqaf).

OBSERVATIONS.—In pursuance of the recommendation of the United Provinces Legislative Council expressed in a resolution passed at a meeting of the Council held on June 29, 1927, the Governor, acting with his Ministers, announced in Government resolution no. 36-A/IX—181, dated January 10, 1929 the appointment of a committee to advise what steps should be taken to provide for the better governance, administration and supervision of Muslim Public and Charitable Auqaf. The committee consisted of Mr. Iqbal Ahmad, B.A., LL.B., Advocate, Allahabad as President and the following gentlemen as members :—

1. Dr. Shafa'at Ahmad Khan, M.A., LITT. D., F.R.H.S.,
25, Stanley Road, Allahabad.
2. Khan Bahadur Hafiz Hidayat Husain, B.A.,
Bar.-at-Law, Civil Lines, Cawnpore.
3. Lieut. Nawab Muhammad Jamshed Ali Khan, M.B.E.,
Baghpat, Meerut.
4. Maulvi Muhammad Obaid-Ur-Rahman Khan, Habib
Ganj, tahsil Atrauli, district Aligarh.
5. Nawab Murtaza Husain Member of the ex-Royal
family of Oudh, Lucknow.
6. M. Agha Ali Khan, Honorary Magistrate,
Allahabad.

The committee thus constituted was also authorized to co-opt two additional members, if the committee found this necessary in order to complete its inquiry. The committee co-opted Mirza Abid Husain, B.A., LL.B., and Mr. M. A. Aziz, M.A., LL.B., Advocates, Allahabad.

2. The committee started by issuing a comprehensive questionnaire and inviting assistance from the public concerned or interested in the subject of its inquiry. The questionnaire was sent to several judicial and executive officers, mutawallis, members of Legislatures and local bodies and other influential Muslims. It also received wide publicity in the Press. The members of the committee themselves visited over 20 districts, examined prominent witnesses and held a number of meetings. They were also favoured with the considered views of the Hon'ble Justice Sir Shah Muhammad Sulaiman and the Hon'ble Mr. Justice Niamatullah, while over 200 prominent members of the Muslim community sent written statements embodying their views on various important points.

3. It is a matter for satisfaction that after the hard labour involved the final conclusions of the committee have the approval of all its members, and the Governor, acting with his Ministers, congratulates the committee on its unanimous and interesting report, which not only covers the whole field of the inquiry but also formulates practical proposals (such as the formation of district waqf committees and the setting up of a Protector of Auqaf with superintendents and the power to appoint auditors) designed to remedy such defects as its investigation of the present management of the auqaf has brought to light. Although the committee has found a great deal of mismanagement, the conditions of many of the auqaf unsatisfactory and a large number of mutawallis violating the duties that the law imposes on them, it has wisely and as a matter of principle refrained from going into the details of individual cases of maladministration except in so far as this has been necessary for elucidating the principles underlying its recommendations.

4. While the report is being considered by Government they hope that the Muslim public will also give its careful

attention to the observations and recommendations made by the committee so that general criticism may assist in deciding the precise lines upon which measures for reform should now be inaugurated.

5. The Governor acting with his Ministers. accordingly tenders his thanks to Mr. Iqbal Ahmad and the members of the United Provinces Muslim Public and Charitable Waqf Committee for their labours and for embodying their views and proposals in the concise and valuable report which is now being published for general information.

ORDER.—Ordered that a copy of the resolution be forwarded to the President and members of the committee for information. ,

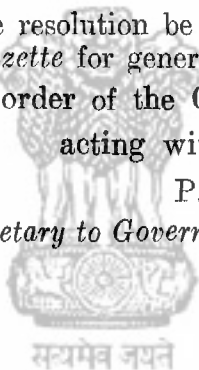
Ordered also that the resolution be published in the *United Provinces Government Gazette* for general information.

By order of the Governor,

acting with his Ministers,

P. MAÑON,

Secretary to Government, United Provinces.





सत्यमेव जयते

Report of the United Provinces, Muslim Public and Charitable Waqf Committee.

ON June 29, 1927, the United Provinces Legislative Council adopted the following resolution moved by Khan Bahadur Hafiz Hidayat Husain :—

1. " That this Council recommends to the Government to appoint a committee to advise what effective steps should be taken for the better governance, administration and supervision of Muslim public and charitable waqf."

2. Under Government order No. 36 A/IX—181, Local Self-Government department dated January 10, 1929, the Governor, acting with his Ministers, in response to the recommendation of the Council, was pleased to appoint the following gentlemen to constitute a committee :—

Mr. IQBAL AHMAD, B.A., LL.B., Advocate, High Court, Allahabad. *President.*

(1) Dr. SHAFAT AHMAD KHAN, M.A., LITT., D., F.R.H.S., 25 Stanly Road, Allahabad.

(2) Khan Bahadur Hafiz Hidayat Husain, B.A., Bar-at-law, Civil Lines, Cawnpore.

(3) Lt. Nawab Muhammad Jamsheer Ali Khan, M.B.E., Baghput, Meerut.

(4) Maulvi Muhammad Obaid-ur-Rahman Khan, Habib Ganj, tahsil Atrauli, district Aligarh.

(5) Nawab Murtuza Husain, Member of the Ex-Royal family of Oudh, Lucknow.

(6) M. AGHA ALI KHAN, *Honorary Magistrate*, Allahabad.

Members.

The Governor, acting with his Ministers, also authorized the committee, thus constituted, to co-opt two additional members. Under this authority the following gentlemen were co-opted additional members of the committee :—

(1) Mirza Abid Husain B.A., LL.B., Advocate, Lucknow.

(2) M. A. Aziz, M.A., LL.B., Advocate, Allahabad.

The term of reference closely followed the resolution above quoted and the committee was asked "to advise the Government what steps ought to be taken to secure the better governance, administration and supervision of Muslim public and charitable waqfs, excluding those of a quasi public or a private nature."

3. The committee met for the first time to record evidence at Allahabad in May, 1929. In the meantime the Chairman, in consultation with members of the committee, prepared a questionnaire (See Appendix C) both in English and Urdu and circulated it very largely among judicial and executive officers, mutawalis, members of Legislatures and Local Bodies and other influential Muhammadans. The response was encouraging.

The committee was favoured with notes and memoranda from institutions and individuals all over the province. It is beholden to them for a mass of material, instructive and useful, from which the committee has much benefited. The pious character of the institution of auqaf, hallowed by religious sanction by which approach is attained to Almighty God, has been a potent factor from the earliest times of tying up of property in perpetuity. But it must be acknowledged that, owing to the neglect or wilful default of both the beneficiaries and mutawallis, vested interests in the properties have been created and abuses have crept in which, it is agreed on all hand, need removal. The main issue of interference in management by external agencies is such that, on that point alone, irreconcilable differences of opinion could have been expected and, if the committee has been able to arrive at agreed conclusions, it is because the desire to do so is more than counter-balanced by any feelings of differences. It is a matter of great satisfaction that the final conclusions of the committee have the unanimous approval of all the members and of the influential Muslim public whom we have taken into our confidence in framing them.

The members of the committee toured through the following districts :—(1) Allahabad, (2) Jaunpur, (3) Benares, (4) Gorakhpur, (5) Fyzabad, (6) Fatehpur, (7) Kora Jahanabad (Fatehpur), (8) Rai Bareilly, (9) Gonda, (10) Bahraich, (11) Agra, (12) Fatehpur-Sikri (Agra), (13) Saharanpur, (14) Moradabad, (15) Deoband (Saharanpur), (16) Thana Bhawan (Muzaffarnagar), (17) Meerut, (18) Lucknow, (19) Cawnpore, (20) Piran Kalyar Sharif (Saharanpur) and (21) Salon (Rae Bareilly).

The committee examined the following witness :—
Allahabad—

(1) Sir Tej Bahadur Sapru, K.C.S.I.

Benares :—

- (1) M. Zainul Abdin Sahib, Mukhtar.
- (2) M. Abdul Rashid, Advocate.
- (3) M. Itrat Husain, Vakil, and Dr. Abdul Karim.
- (4) M. Fakhruddin, Vakil.
- (5) Haji Muhammad Mohsin Sahib.
- (6) M. Abdul Qadir, Vakil.
- (7) Muhammad Husain, Mutawalli to the waqf of Bibi Khanam Jan.

Jaunpur :—

- (1) M. Nazir Ahmad Khan, Advocate.
- (2) Mr. Muhammad Kazim Husain B.A., LL.B.
- (3) M. Abdul Waheed.
- (4) Moulvi Muhammad Hasan.
- (5) M. Ali Hasan Sahib, Mukhtar.

Cawnpore :—

- (1) Maulana Maulvi Muhammad Abdul Razzaq (Qazi Shahar).
- (2) Nawab Khaqan Husain.
- (3) M. M. Noorul Hasan.
- (4) Khan Sahib Muhammad Ibrahim.
- (5) M. Fazle Hasan.
- (6) Syed Zakir Ali, Advocate.
- (7) S. Abdul Rahman, B.A., LL.B., S. Wahidul Hasan, B.A., LL.B.

Gonda :—

- (1) Mirza Mahmud Beg.
- (2) Khan Bahadur Razi Uddin Ahmad, Bar-at-Law.
- (3) Aiyub Ahmad.
- (4) Mr. Muhammad Yamin Usmani.

Gorakhpur :—

- (1) Mr. Muhammad Ismail, Bar-at-law.
- (2) Moulvi Muhammad Shamsuddin and Mr. Muhammad Naqi Khan, Vakils.
- (3) Khan Bahadur Muhammad Zaki.
- (4) Mr. Abdul Hai and Mr. Muhammad Hamid.

- (5) Shaikh Ghulam Husain and Syed Wasi Haider.
- (6) Mr. Mustafa Husain, Vakil.
- (7) Qazi Azimul Haq and Asdulla Abbasi.
- (8) Khan Bahadur Hamidullah.
- (9) Mr. Nisarullah.
- (10) Agha Muhammad Sibtain and Mir Khadim Husain.
- (11) Muhammad Sulaiman Ansari and M. Altaf Husain.

Saharanpur Piran Kalyar and Deoband :—

- (1) Moulvi Mushtaq Ahmad.
- (2) Khan Bahadur Muhammad Zafar Ahmad.
- (3) Messrs. Muhammad Ishaq, Muhammad Yasin, Muhammad Ibrahim, Samiullah, Sirajul Haq and Hafiz Abdul Aziz.
- (4) M. Ekramul Haq, M. Niyaz Muhammad Khan, B.A., pleader, M. Munfa'at Ali and Moulvi Ahmad Ullah.
- (5) Moulvi Abdul Latif Sahib.
- (6) Mr. Moti Lal, Auditor.
- (7) Muhammad Yasin Sahib.
- (8) Moulvi Manzoor Nabi Sahib.
- (9) Khan Bahadur Shah Abdul Rahim of Piran Kalyar.
- (10) Maulana Husain Ahmad Sahib Madni of Deoband.
- (11) Maulvi Asghar Husain Sahib of Deoband.

Thana Bhawan, District Muzaffarnagar :—

- (1) Maulana Ashraf Ali Sahib.

Fatehpur and Kora Jahanabad :—

- (1) Amir Hasan Khan.
- (2) Khan Sahib S. Tufail Ahmad.
- (3) Nawab Bande Hasan.
- (4) M. Zafar Ahmad, Advocate, and Munshi Hasanuddin Khamosh.
- (5) Khan Bahadur Mr. Ahmad Kamal, Bar.-at-Law.
- (6) Mr. Zahurul Hasan and Mazhar Hasan.
- (7) M. Ataul Malik and M. Shafiullah.
- (8) Syed Afzal Hasan Qadri.

Agra and Fatehpur Sikri :—

- (1) Muhammad Waliuddin Chisti.
- (2) Nazir Ali Khan Sofi.
- (3) Mr. Muhammad Ibrahim.
- (4) M. Ali Ahmad Khan Sahib.
- (5) Khan Sahib M. Basit Ali Khan.
- (6) Muhammad Abdul Jalil Sahib.
- (7) Messrs. Hasan Abid Jafri and Mazhar Hasan Khan.
- (8) Hakim Abdul Sattar Khan.
- (9) Syed Ibni Ali Sahib.

Fyzabad :—

- (1) Khan Bahadur Moulvi Mehdi Husain.
- (2) Mr. Afzal Husain, B.A., LL.B.
- (3) Mirza Muhammad Muftaba Ali Sahib, and
- (4) Syed Jawad Husain Sahib.

Behraich :—

- (1) Messrs. Khawaja Khalil Ahmad, Mujibul Hasan, Deputy Collector and President, Dargah Committee, Nizam-uddin Haider, Finance Member of Committee, Abdul Majeed Khan, Manager, and Khan Sahib Faizul Hasan.
- (2) Mr. Zaheeruddin Faruqi, Bar.-at-law.
- (3) Khwaja Khalil Ahmad, M.L.C.
- (4) Khan Sahib Faizul Hasan.

Rai Bareilly :—

- (1) Dr. Mahmudul Hasan.
- (2) Khan Sahib Jafar Ali Khan, Deputy Collector.
- (3) S. Altaf Husain, Deputy Collector.
- (4) Mir Ashfaq Ahmad and Muhammad Shoeb.
- (5) Mir Majid Ali Sahib.
- (6) Shah Naim Ata Sahib, Sajjadanashin of Salwan.

Moradabad :—

- (1) S. Nabi Hadi, Chairman, Municipal Board.
- (2) M. Farid Uddin Sahib.
- (3) S. Rais Uddin Ahmad of Amroha.

- (4) S. Abdur Rahman Sahib.
- (5) M. Badruddin.
- (6) Saiyid Ale Hasan and Mr. Muhammad Yasin Siddiqi.
Auditor.
- (7) M. Umar Daraz Beg.
- (8) M. Farzand Ali Sahib.

Meerut :—

- (1) S. Nazir Husain, S. Muhammad Raza and S. Zafar Husain.
- (2) Mr. Bansi Dhar, Auditor.
- (3) Mr. Mustahsan Zaidi, Bar.-at-Law.
- (4) S. Zakir Ali Sahib.
- (5) Saiyid Zamin Ali Shah of Sardhana.
- (6) Rao Bahadur Haji Muhammad Abdul Hamid of Baghpat.
- (7) Khan Bahadur Wajih Uddin, Ex. M.L.A.
- (8) Mr. Ibrar Husain, Mukhtar.

Lucknow :—

- (1) Auditor.
- (2) Saiyid Abdul Ghaffar.
- (3) Saiyid Kalbe Abbas, Advocate.
- (4) Saiyid Ali Muhammad, Advocate.
- (5) Saiyid Ghulam Husain Naqvi, Advocate.
- (6) Mr. B. P. Gharda, F.A.A., F.S.A.A., I.S.A., Incorporated
Accountant.
- (7) Syed Ahmad Sahib, Allama Hindi.

We have further been favoured with the opinions of The Hon'ble Justice Sir Shah Muhammad Sulaiman and The Hon'ble Mr. Justice Niamatullah, and in answer to the questionnaire issued by the committee, about two hundred gentlemen, from all over the province, submitted written statements embodying their opinions on the various points raised by the questionnaire.

We have divided our report into two parts. Part I deals with the history of waqf administration with special reference to British India; while Part II embodies our recommendations. We think that the history of the attempts made in the past to reform the laws relating to auqaf, is essential for a clear grasp of the problems with which the committee has dealt in Part II.

PART I.

Supervision of Muslim endowments was one of the essential duties of Islamic States who drew up detailed regulations for the guidance of their officers and rigidly enforced them. One of the most important departments of the State was the board for the inspection of grievances (Nazarul Mazalim) which controlled the auqaf. This department was presided over by an officer higher in status to that of the qazi whose judgment the president could under certain circumstances review.

The responsibility of supervising and even directly administering the waqfs, inherent in the Arab constitutions, was inherited by every Muhammadan Government, including the Moghal Government of India, which regarded proper supervision of endowments as their fundamental duty.

The decay of the Moghal Empire in India was shared by every Muhammadan institution and by no other more than by the institution of auqaf.

The misappropriation of waqf property roused even the English administrators, and Bengal Regulation, XIX of 1810, provided for the appointment by the Board of Revenue of Managers of Endowments or for the making of such provisions for superintending or managing endowed properties as may be thought fit and proper. This regulation, it is interesting to notice, followed closely the line chalked out in the Aeen Akbari by Emperor Akbar for the management, control, and supervision of waqfs. The Presidencies of Madras and Bombay followed suit and enacted Regulation VII of 1817 (Madras) and Regulation of 1827 (Bombay) for the same purpose. Not only were the waqfs most efficiently supervised by the Government but it even disbursed subventions to them in no niggardly fashion.

This state of affairs continued till 1863, when there was a sudden and remarkable change in the Government's policy owing mostly to the pressure of English opinion mainly organized and directed by Missionary Societies. As a result of this agitation Act XX of 1863 (Religious Endowments Act) was passed. Section 4 of this Act provided that "in the case of every such mosque, temp'e or other religious establishment which, at the time of passing of this Act, shall be under the management of any trustee, manager or superintendent, whose nomination shall not vest in nor be exercised by, nor be subject to, the confirmation of the Government or any public officer, the Local Government shall, as soon as possible, after the passing of this Act, transfer to such trustee, manager

or superintendent all the landed or other property which at the time of the passing of the Act shall be under the superintendence, or in the possession, of the Board of Revenue or any local agent and belonging to such mosque, temple or other religious establishment except such property as is hereafter provided; and the powers and responsibilities of the Board of Revenue and the Local Government in respect to such mosque, temple or other religious establishment and to all land and other property so transferred, except as regards acts done and liabilities incurred by the Board of Revenue and any local agent, previous to such transfer shall cease and determine". This Act radically modified Bengal Regulation 19 of 1810 and Madras Regulation 7 of 1817. It relieved the Board of Revenue and the local agents from the duties imposed on them by the Bengal and Madras Regulations so far as those duties involved the superintendence of land granted for mosques, and other religious uses, appointment of trustees, etc. This was an important piece of legislation and marked a departure from a policy which had committed the Government to some responsibility in the administration of auqaf. As a matter of fact culpable mismanagement of auqaf may safely be said to commence from this year. There were two kinds of trustees before this Act was introduced. *Firstly* there were trustees, managers of superintendents of trust properties, whose nomination vested in the Government, or was subject to its confirmation, and the property in their charge was such to which the provision of either of the Regulations referred to above applied (section 3 of Act XX of 1863). This Act aimed at setting up a committee in every division or district to take the place of the Board of Revenue and the local agents, such committees to exercise the powers of the Board of Revenue and also the powers of the local agents. (See section 7 of the Act). By a judicial decision the functions of the committee were restricted primarily to see that the funds of the endowment were preserved and not wasted. The committee had no business to interfere in the internal management of the endowments.

The second class of trustees, managers or superintendents of trust properties were those, who at the time of the passing of Act XX of 1863 held charge of similar properties, but whose nomination did not vest in nor was the subject of confirmation by Government. To such trustees, managers and superintendents, the Government transferred all the landed or other property which was under the superintendence or possession of the Board of Revenue (see section 4 of the Act quoted above *in extenso*). All authority exercised by the Board and local agents was henceforth to be exercised by such managers, trustee or superintendents (see section 6 of the Act).

It is important to notice that the great bulk of properties in the United Provinces falls in the second category.

From the short history that we have given above, two things emerge :—

- (1) That before the Act of 1863, the Board of Revenue and the local agents, that is the Collector of the district, exercised effective control over the management of trust properties, irrespective of the fact whether the trustee was appointed by the Government or not.
- (2) That since the transference of properties to the exclusive control of the trustees the management has considerably deteriorated, as under section 22 of the Act of 1863, it is not lawful for the Government to manage or to take any part in the management of any such properties, or to take any share in the appointment or nomination of any trustee as provided in section 5 of the Act.

This new policy it need hardly be pointed out produced disastrous results. Supervision of management by the Government was done away with. No provision was made for rendition of accounts and, in many cases, large accumulations of surplus ecclesiastical funds in Government treasuries were made over to the Mutawallis to be wasted and squandered.

REFORM OF WAQF URGENTLY REQUIRED BY THE COMMUNITY.

The question of control, management and reform of waqf has engaged the attention of the Muslim community in India from a very early time. So long back as 1887, Sir Syed Ahmad Khan brought forward a resolution at the meeting of the All-India Muhammadan Educational Conference urging reform in the administration of waqf properties. Sir Syed Ahmad Khan supported another resolution on the same subject in the year 1888, while similar resolutions were passed at the meetings of the All-India Muhammadan Educational Conference in the years 1889, 1903, 1905, 1906 and 1913. This agitation produced certain result and the Government called a conference of Muslim representatives from all provinces to consider the subject. The subject was discussed at a meeting of officials and non-officials and, as a result of the deliberations, a Bill was drafted and introduced in the Imperial Legislative Council, but the Great War broke out a few months later and the Government of India, on account of its pre-occupations in the war, did not take any action in the matter. The public was in favour of the Bill, and the prominent leaders of all communities urged its passage into law. The Bill was passed in 1920 as Act XIV of 1920. (The Charitable Religious Trusts Act of 1920).

This Act aims at a more effective control over the administration of charitable and religious trust. Its main provisions are embodied in sections 3, 5, 6 and 7 of the Act. Section 3 of the Act empowers any person, having an interest in any express or constructive trust created for charitable or religious purposes, to apply to the District Judge for certain matters connected with the trust. No petition, however, under these provisions could be entertained if (1) a suit instituted in accordance with the provisions of section 92 of the Civil Procedure Code was pending in respect of the trust in question. (2) If the trust property is vested in the treasurer of charitable endowments, the Administrator General, the Official Trustee or any society registered under the Society Registration Act 1860 or (3) a scheme for the administration of trust property has been settled by any court of competent jurisdiction or by any other authority acting under the provisions of any enactment.

This Act fell far short of the expectation of the Muslim public; for what they really needed was a measure that would ensure the control of the community over the waqf properties and would oblige every mutawalli to submit accounts. This act applied only when a breach had been committed. Another difficulty consisted in the fact that only a person having an interest in the property could move the court. Owing to the employment of the words "having an interest", the restricted meaning assigned to these words and the difficulty of proving a breach when the accounts were not regularly exhibited, this Act has been rarely availed of.

The Government having committed itself to a policy of strict neutrality in the year 1863, the initiative for bringing about any reform that would be desirable and necessary in the administration of auqaf lay entirely with the community. As an active step towards this, Mr. Abul Kasim, a non-official member of the Legislative Assembly brought forward a Bill known as the Musalman Waqf Registration Bill to provide for the registration of waqf estates and the proper rendering of accounts by mutawallis of such estates in British India. The Bill proposed that it should be the duty of every Collector of a district to maintain a register of waqf estates, within the local limits of his jurisdiction, and that each Local Government should appoint a central committee *for the due administration of waqfs*. We emphasize the words "for the due administration of waqfs" because the Bill, as introduced in the Legislative Assembly, clearly implied that unless and until some provision was made for the proper administration of waqf property, the Bill in its object will prove infructuous. In the statement of objects and reasons when the Bill was introduced it was said :—"For several years past there has been a growing feeling amongst the Muhammadan community, throughout the

country, that the numerous endowments, which have been made or are being made daily by pious and public-spirited Muhammadans, are being wasted or systematically misappropriated by those into whose hands the trust may have come in course of time. It is believed that the feeling is unanimous that some steps should be taken in order that incompetent and unscrupulous mutawallis may be checked in their career of waste and mismanagement and that the endowments themselves may be appropriated to the purposes for which they have been originally dedicated."

This Bill was meant to provide a two fold purpose; *firstly* registration of waqf estates and *secondly* proper rendition of accounts annually by mutawallis of such estates in British India. It was introduced in the Legislative Assembly on September 26, 1921. Sir William Vincent declared that "though it had been the practice of the Government of India for the last 60 years to keep their officers free from any connection with the management of these religious trusts, yet it was represented to them that the Muhammadan community was very anxious that the Bill should be introduced and the Government of India, therefore, did not object to the introduction of the measure."

This Bill contained a clause (16) whereby committees for the management of waqf properties were to be appointed in every district and the Collector was to be the ex-officio President of the district committees. The Government opposed this clause as they thought it would involve a large amount of work and the Collector already overburdened with work, could not be expected to efficiently perform these extra duties. As a concession to opposition by the Local Governments, clause 16 above referred to was deleted by the select committee appointed to consider the Bill. It would be pertinent to refer what the Government of the United Provinces said in support of this Bill. "It will be observed that the majority of those consulted are emphatically of opinion that some machinery for improving the administration of waqfs is eminently desirable, since there are many cases of mal-administration, though possibly the case is stated somewhat too strongly in the preamble of the Bill."

Clipped of the most important clause relating to the appointment of committees, the Bill, when passed, only made provisions for the publications and audit of accounts once a year, so that persons interested in the maintenance of such waqfs may have materials furnished to them, upon the basis of which they could go to the Court and ask for reliefs which are mentioned in section 92 of the Civil Procedure Code.

It is clear from what we have stated above that the Bill as passed into law in the form of Act 42 of 1923 has failed to touch the very fringe

of the demand of the community, namely the reform in the administration of waqf estates. Till such time as this is done, mere filing of accounts, sometimes faked, does not in the least bring about any change in the attitude of the mutawallis.

PART II.

THE CONDITION OF WAQFS IN THE UNITED PROVINCES.

Before we proceed to a discussion of the measures which we deem necessary for the better governance of Muslim waqfs, we think it necessary to give a brief account of the methods and manner whereby the waqfs are administered at the present day.

At the request of the committee the district officers of all the districts in the province have kindly furnished it with statements giving particulars of the waqf properties in their district (Appendix B). From these statements we find that the annual income of all auqaf in the United Provinces is Rs. 39,95,268-10-10½. We feel that the statement mentioned above do not exhaust all the auqaf, because we are convinced that there are many waqfs which are not recorded as such in the public papers. While it is impossible to state a precise and exact figure based on a careful examination of reliable material, it is clear that the income of waqf property in these provinces cannot fall short of Rs. 50,00,000. This is a fairly large amount for a community of six and three quarter millions, and if it is properly spent on the objects for which the waqfs have been created in these provinces, it can be used as a most potent and effective means for the uplift of the community, moral spiritual and educational. We go further and assert that, a careful and conscientious supervision and administration of the existing waqfs will go far towards solving some of the pressing problems which are awaiting solution for want of funds. We should like to make it perfectly clear that we are fundamentally opposed to the diversion of the income of any waqf from the object for which it is created. We do this, because this will be against the clearest and strongest injunctions of the Shariat. Such a step is justifiable only if, and when, the object for which the waqf was originally created has ceased to exist. This is in accordance with what is technically called the doctrine of cypres.

This brings us to a brief review of the manner in which waqfs are administered in these provinces. While the committee closely inquired into the administration of many waqfs and found overwhelming majority of them culpably mismanaged, the committee, as a matter of principle, refrains from going into the details of mal administration of individual institutions, unless such a course is essential for elucidating the principles underlying its recommendations.

We may also add that the object of our inquiry was not to investigate the title or the right of any mutawalli, or of any community or sect, to a particular waqf, nor was it our function to adjudicate on the respective merits of the claims of particular sects or individuals to particular waqfs. We have, therefore, deliberately avoided discussing individual cases, in order that we may be enabled to deal with the general principles which underlie a sound and efficient administration of waqf property.

We now come to the methods in force in the administration of these waqfs. We sum up the results of our inquiry below.

While we admit that there are a number of waqfs which are well administered and whose mutawallis are inspired by a genuine sympathy with the aims and objects of the waqf, we are forced irresistibly to the conclusion that the condition of a very large number of waqfs is most unsatisfactory and urgently awaits reform. The following extracts from the evidence recorded, and the opinions received, by the committee fully bear out this conclusion :—

- (1) Sir Tej Bahadur Sapru says : "In my professional capacity I had to appear in a large number of waqf cases relating to Muslim waqfs, and the opinion that I have formed is that, so far as the management of charitable trusts of this kind is concerned, both the Hindu and the Muhammadan trustees are equally bad". Sir Tej Bahadur Sapru added as an illustration that in a big case in which he appeared in his professional capacity 70 per cent. of the income was never applied to any of the objects for which the waqfs had been created. This was by no means in his opinion a solitary instance".
- (2) The Hon'ble Mr. Justice Niamatullah expresses the opinion, "I have reasons to believe that a number of Muslim waqfs are not properly administered, that the income of the waqf property is misappropriated and diverted from proper channels. I have concrete instance in my mind. In certain cases endowed properties have been wrongfully alienated and are in possession of absolute strangers to waqfs who treat it as private property.
- (3) The opinion expressed by the Hon'ble Justice Sir Shah Muhammad Sulaiman is : "Generally speaking the whole income which ought to be spent on the objects of waqf is not so spent. I am afraid there are cases of misappropriation by the mutawalli".
- (4) The statement of Shah Naim Ata, the present mutawalli of one of the largest properties in Oudh, the statement of

Noorul Hasan Khan, manager of Jama Masjid waqf property in Cawnpore, and the statements of several mutawallis in Saharanpur and other various places too numerous to detail, very clearly demonstrate that not only are the mutawallis unmindful of the confidence reposed in them by the authors of the trust but are flagrantly violating the duties that the law imposes on them as trustees.

The main evils of the present day administration of auqaf may be briefly summarized as follows:—

- (1) In some cases the mutawallis have actually sold or mortgaged the waqf properties. It is difficult for us to state the exact amount of property that has changed hands, but we are safe in stating that the amount of such property is considerable.
- (2) In numerous cases the income of the auqaf is misappropriated and spent by the mutawallis for the satisfaction of their private needs. The evil is widespread, and numerous persons have testified to its existence.
- (3) Very few mutawallis keep regular and accurate accounts of the auqaf. Many ingenuous devices are resorted to toward off suspicion and investigation. Indeed in many cases double set of accounts are maintained of which only one is meant for the public. In other cases "Faked" accounts are prepared in which the entries are entirely fictitious.
- (4) The Musalman Waqf Act of 1923 has failed to achieve the declared objects of the enactment. The Act does not provide any machinery for the enforcement of its provisions. The accounts filed by the mutawallis are, of course, audited, but very few auditors have taken the trouble to inquire minutely into the income of the auqaf or the way in which they are administered. Very few district judges have time to institute an inquiry into the reliability of the accounts filed in their courts under the Act. It is very easy for a mutawalli to prepare an account which will satisfy the comparatively easy test both of the auditors and the district judges. In short the serious evils which it was the object of the Act to eradicate have not been removed.
- (5) In a number of cases, the mutawallis treat the entire waqf as their private property, and resent inquiries into the origin of the waqf, as an unreasonable interference with the exercise of their rights.

It is unnecessary, for us to amplify our remarks by citing examples. Nobody denies that these evils exist; nor does any one deny the need for their removal. We are, therefore, strongly of opinion that the existing laws on the subject are in effective and incomplete. While we are convinced that a sufficiently comprehensive measure, based on the sentiments of our community and the result of its experience, is necessary for the better administration and governance of the Muslim auqaf, we feel that, the machinery devised should not be complex, and should be such, as to, ensure the object in view, without undue interference with the internal administration of the waqfs by the mutawallis. On consideration of the materials collected by us we have arrived at the following conclusions, which we submit for the consideration of the Government :—

DISTRICT WAQF COMMITTEES.

Our first recommendation is that a committee should be formed in every district, to be called the district waqf committee, the functions of which should be mainly of an advisory character. It should be charged with the general supervision of local waqfs. It should have the right to make suggestions for activities and, where it thinks fit, to investigate into the administration and condition of auqaf of the district when necessary. The committee will be the rallying ground of men interested in auqaf and keen in reforming them. It will bring the organized interests of mutawallis and beneficiaries into a definite relation with the protector and the community. It will thus provide materials for that co-operation with the Government which will be instrumental in dispelling those clouds of suspicion that often bring about estrangement and, more often than not ruin beneficent institutions.

We think that these committees should not be unwieldy and their number should be limited to six or nine, as the case may be. In a district where the auqaf are comparatively few, the number need not exceed six, while in others, where the number of auqaf is comparatively large, the committee should consist of nine members.

We think it would be conducive to the smooth working of the machinery, we have proposed, if a senior Muhammadan Deputy Collector or a Senior Judicial Officer is appointed, by the Local Government, to preside over the meetings of these committees. He will exercise the ordinary duties of the Chairman and shall have a vote and a casting vote.

We are of opinion that, wherever possible, at least one-third of the members of each committees shall be Shias. The ordinary work of the committee will, however, be conducted by all the Sunni and Shia members thereof meeting in a joint session, and transacting business relating

to the supervision and administration of all Muslim endowments. This will have the effect of co-ordinating the work of the two sections, and will contribute to the evolution of a uniform policy of action. In committees consisting of six members, we propose that two should be nominated by the Local Government on the advice of the Collector; while in those consisting of more than six, the Local Government is to nominate three on the advice of the Collector. The remaining members are to be elected by persons, whose voting qualifications we shall presently suggest. Some of the witnesses examined by us did not favour the idea of nomination by the Government, but we feel that the nomination by the Government will import an element of stability and steadiness to the machinery devised by us. Moreover it may happen that the method of election, provided by us, may fail to bring in persons who possess special interest in, or have made a special study of, the subject. For instance, a committee, without the safeguard of nomination, may not include any mutawalli. Again, it may happen in a few cases, that the requisite number of Shias may not get elected according to the scheme adumbrated by us. In such an event, the Local Government should make up the deficiency by nominating members of that sect. The working of all deliberative bodies, specially of bodies to which are also entrusted the duties of supervision to a certain degree, rests on confidence and credit. If they do not inspire confidence in the public, they lose authority, prestige and influence. The public begins to suspect them, and there is a fear of their degenerating into a clique. In order, therefore, that a committee should be genuinely representative, it is necessary that it should include persons who will represent the many sidedness and the variety of interests, which a subject like the Muslim endowment creates and multiplies. It is for these reasons that we have made a provision for nomination by the Local Government. It may be said that the interference of the Government in such matters is undesirable. Our reply is that, all Governments in India in the past have exercised supervision over Muslim endowments, and our proposals regarding the constitution of district waqf committees, instead of bringing the Government, place in the hands of the community itself a power and influence which it has never exercised before. We believe that the Government in each province will become fully responsible to the legislature, and the Minister in charge will be accountable to the public, through the members of the legislature, for the due and careful administration of the Muslim endowments.

Qualifications for the
electors for the local
waqf committees.

1. All Muslim members of the Local Boards and Legislative bodies resident in the district.
2. All Muslim honorary magistrates, honorary munsifs, honorary assistant collectors and special magistrates of the district.

3. All Muslim graduates of five years' standing, and above, residing in the district.

4. All Muslim zamindars paying a Government revenue of Rs. 500 or more

All Muslim voters for the district waqf committee shall be eligible for election to membership of that committee.

All persons who are disqualified under the electoral rules in force for the Legislative Council shall be disqualified as voters for the district waqf committees.

Disqualifications

We have sketched above the chief features of the work which the district auqaf committees will be expected to perform. It is, however, necessary for us to lay down in somewhat greater detail, the lines on which the committees should work. For the successful working of the machinery we have devised, it is necessary that there should be no overlapping between the work of the committee and that of the protector and that, in cases of conflict, the decision of the protector should prevail. Subject to this power conferred on the protector, the committee will perform the following functions. It will have a general supervision over the local auqaf. We do not want to analyse the implication of the word "supervision" at this stage. Our meaning, however, is perfectly clear. We would like the committee to have a statutory authority to inquire into, and report on, the manner in which any waqf in the district is administered. That will be its proper and legitimate function. But this will not entitle it to carry out, execute or enforce any measure which it may suggest for the reform of that waqf. Its duties will be essentially deliberative and advisory in character. It should not usurp executive functions, which should be exercised by the protector. Every mutawalli will, of course, be bound to supply details of the waqf through the appropriate sub-committee of Shias or Sunnis, and the district committee will have the right to scrutinize the return filed by the mutawalli, and carry out investigations into the accounts submitted by him. If a district committee fails to carry out this function, the justification for its existence disappears. This will be the most important function of the district committee. Unless this function is performed conscientiously and thoroughly, no scheme could be devised which will in any way reform the administration of waqfs. With a view to enabling the committee to perform these functions competently, it will be empowered to depute a member or members thereof to enter upon and inspect the local waqf properties, and to institute inquiries into the methods of administration pursued by the mutawallis.

Functions of the district committees.

The mutawallis will file the accounts on a form prescribed by the protector, and after audit by the auditor in the manner detailed by the district committee. If the committee is satisfied with the accounts it shall pass the same, otherwise it shall formulate its objections and submit the same to the protector, along with any explanations which the mutawallis may submit, for such action as the protector may deem necessary to take.

The committee will discuss and pass the budget submitted by the mutawallis if it is satisfied with the same. It may reject the budget or amend it, if it finds anything therein which justifies this action, and report the matter to the protector. The mutawalli concerned will be obliged in that case to satisfy the protector on the point on which the district committee has made representation and the orders of the protector thereon shall be final. It may be noted that neither the district waqf committee nor the protector has the power to divert the income of surplus funds of any waqf to any purpose unconnected with the object for which it was created. But if the object has ceased to exist, the district committee will make recommendations to the protector for the application of the income to cognate objects and the orders of the protector thereon shall be final.

In case of waqfs for charitable or religious purposes, without specifying the objects for which the waqf was created, the district waqf committee shall, after due regard to the application of the income in the past, make recommendations to the protector for the application of funds to such objects as it considers desirable, and the orders of the protector thereon shall be final.

The district committee shall be charged with the protection and supervision of all Muslim religious and charitable buildings not in the charge of any mutawalli.

The committee has, during its tour in the province, come across several instances in which waqf properties have changed hands and gone into the possession of trespassers, and, in many cases, the factum of waqf is wrongfully denied. It will be one of the most important duties of the committee to trace out such properties and file suits for its recovery, with the previous sanction of the protector.

The committee will also consider the note of the auditor on each waqfs and report on the same to the protector. It will also be empowered to make inquiries on such matters as may be referred to it by the protector and report on the same to that officer.

We recommend that the life of the committee should be five years and it should meet, at least, once in three months. In order that the committee may function efficiently, it is necessary that a secretary should be elected by the members thereof. The secretary shall be honorary, and the committee should be provided with an office and an adequate clerical staff. At the ordinary meetings of the committees consisting of six members three will constitute a quorum, while for larger committees, consisting of nine members, five will constitute a quorum.

Life of the district committees,

Quorum.

The district waqf committee shall be divided into Sunni and Shia sections.

All matters, including the budget of the mutawallis, relating to the Shia and Sunni auqaf will be first submitted and considered by the Shia and Sunni sub-committees respectively. The district committee, as a whole will scrutinize the budgets of the two sub-committees, and will give its final sanction and approval. We do not apprehend that there should be any clash or conflict between the two sub-committees in their working, nor is there any reason to suppose why the machinery we have devised should not run smoothly and efficiently. There is further no ground for the fear of its exploitation by interested parties for selfish or party ends. On the other hand, we anticipate that the work of these sub-committees will stimulate the administration of auqaf, keep the mutawallis up to the mark, and enable every Muslim to play a part humble or important as the case may be, by bringing serious evils and other deficiencies promptly to the notice of the district committees. In districts where there are only two members in a sub-committee, the district committee will co-opt a local gentleman of that sect to the sub-committee. Cases may occur when the sub-committee charged with the duty of supervising the Shia auqaf may consist only of two members, and it may be difficult for them to elect a chairman. We have, therefore, provided for this contingency by empowering the district committee to co-opt a local gentleman in order that a chairman may be elected. The person co-opted will naturally belong to the sect of which the two members of the sub-committee are adherents.

Duties of the sub-committee.

PROTECTOR.

It is clear, however, that the district committees cannot function properly, unless there is a central authority invested with adequate and effective powers to effectuate the proposals of the committees. It was

suggested to us, during the course of our inquiry, by many eminent witnesses that the setting up of a central committee for the province would be preferable to the appointment of a protector. But we consider that a protector, armed with statutory powers for effectuating the reform in the administration, is a far more potent influence than a committee composed of conflicting interests and varying ideals. We recommend the appointment of a protector, who should be an officer, in no case lower in status than that of a District Judge or a Collector. No reform of auqaf is feasible, unless a protector with definite status and enjoying adequate powers is appointed. We go further and say that the protector will set the whole machinery of reform in motion and on him will devolve the responsibility of enforcing the varied and complex provisions of the statute on auqaf. It is, therefore, of essential importance that the protector should be chosen most carefully, after very thorough inquiries, and should be appointed by the Governor on the advice of his Ministers. He must possess driving force and initiative, and combine tact with firmness. The committee feels that, for a work of this kind, an energetic man is necessary. It is of opinion that ordinarily no retired officer should be appointed to this post.

The foremost duty of the protector will be to compile an accurate and authentic record of rights containing the fullest possible information relating to the origin, income, object, beneficiaries, etc., of auqaf in every district. The record of rights should contain the following among other matters :—

- (a) Qualifications required for the trustee.
- (b) Rules about the appointment and devolution of the office of the mutawalli.
- (c) Rights, duties and qualification of, other classes of persons rendering service to the trust or the endowments.
- (d) Object of the trust.
- (e) Sources of income and their estimate.
- (f) Customary services and celebrations.

We attach great importance to the correct preparation of this document and, we feel, that no radical reform in the administration of auqaf is possible till such time as lack of material on the subject confronts the community.

This absence of record is more or less responsible for the alienation, embezzlement and waste of considerable amount of waqf property. Without this indispensable preliminary it will be impossible for the

protector either to control, supervise, check or limit the activities whether of the district committees or of the mutawallis. We have no doubt that this work will entail certain difficulties but they would not, we hope, be insurmountable and any labour on this score will be compensated many times over by the results achieved. It is unnecessary to add that perfection of the record of rights will involve investigation into dispute regarding title, while the amount of income, or a portion of the waqf, to be earmarked for a particular object, may also become a subject of controversy. We make it clear, however, that we do not propose to give any finality to the decision of the protector. All that we want is that if the protector is satisfied *prima facie* that the property is waqf property, or that any portion of the endowed property, or any portion of its income, is to be earmarked for a particular object, he will so declare, but his decision will be liable to be challenged in a court of competent jurisdiction.

The record of right should be revised at stated period of, say, five years and should be kept up to date. Every change in the mutawalliship of the waqf property or its income, and object, or other particulars should be properly notified to the protector by the district committees. We propose that a copy of this record of rights should be maintained in the office of the District Judge for each district. The public should be allowed to take a copy of an entry or entries in the record of rights on payment of moderate fees.

The next important function of the protector will be to take suitable measures in all cases where the local committee does not approve of the budget prepared and submitted by the mutawalli. The protector may ask for an explanation from the mutawalli, and if he is satisfied with the explanation, he need not proceed further in the matter. If, on the other hand, he has reason to believe that the case requires investigation, the protector should be empowered to institute an inquiry and to take such measures as he deems necessary, as a result of this inquiry. It is not necessary for us to detail the measure which he may adopt, as this entirely depends on the nature of each case. He may either reject the budget altogether and institute an action against the mutawalli, or he may suggest amendment to it; and if the mutawalli agrees to such amendment, the budget may be passed in an amended form. These are matters of detail which cannot be specified at the present stage. We think that the protector must be left with reserve of powers to deal with emergencies and decide cases in his administrative capacity.

We feel it necessary to point out that section 92 of the Civil Procedure Code has not been properly utilized by the public. This is due partly to the fact that it is difficult for a private individual, with

limited resources, to institute a case against powerful and influential mutawallis and partly to the fact that the machinery devised is cumbersome and tedious, involving considerable delay and expenses. We recommend that the protector should be empowered to sanction the institution of suits contemplated by section 92, Civil Procedure Code. We may, in this connection, refer to section 69 of the Madras Act of 1923, in which an analogous machinery is contemplated. Some of us wished to establish a special tribunal for the speedy decision of such cases. On a closer examination of the difficulties involved in the establishment of such tribunals, we came unanimously to the conclusion that the existing courts could cope satisfactorily with the work. We have, therefore, rejected the proposal for a special tribunal and have contented ourselves with conferring on the protector the power to sanction suits under section 92, Civil Procedure Code. Before giving sanction, the protector may make necessary inquiries from the local committees or from the local executive officers. With a view to prevent a wrong use of this power, he should be authorized to call for security of costs in proper cases, as a condition precedent to granting sanction. We have dealt, so far, with the power of the protector to sanction institution of suits. In some cases, it may be necessary for him not only to sanction suits, but also to institute such suits *suo moto*. We think that such a power should be conferred on the protector. We think that his power to sanction the institution of suits will be ineffective, unless he is empowered to institute suits, under section 92 of the Civil Procedure Code, *suo moto*, and to defend suits relating to waqf properties, in such cases as he deems fit. For example the protector should be empowered to take steps *suo moto* for the recovery of Kora Jahanabad waqf in Fatehpur district; property appertaining to Badshahi Masjid in Fyzabad and for getting a scheme of management for Salon waqf in Rae Bareilly district, notorious for its mismanagement and misappropriation.

One of the most important duties of the protector will be to adopt effective measures for the recovery of lost property. We know, of course, that, in some cases, it is quite impossible to recover a large amount of waqf property which has been sold by dishonest mutawallis to private individuals. There are, however, a number of cases in which it is still possible to recover these properties. We believe that a measure of this kind will be greatly appreciated by the community, as we have reason to think that a considerable amount of such property is likely to pass into the hands of private individuals, unless an effective check is put upon such a waste.

Cases may arise in which the dedicator may appoint the protector mutawalli of auqaf, or the court may authorize him to supervise and check accounts and to have advisory jurisdiction. We think that, in such cases, the help, guidance and advice of the protector will be of immense value for the honest and efficient working of these auqaf, and he should, therefore, be authorized to act in that capacity under such conditions as either the "Waqif" or the Court may impose.

Again, the protector should be empowered to settle schemes of management in cases of those waqfs the object of which are not evident from any written instrument. While we emphasize the need for the strictest and most careful adherence to the objects of the waqf on the part of the mutawalli, we are not oblivious of the fact that there are quite a number of instances in which the original objects of such waqfs have ceased to exist. We are emphatically of opinion that there should be no diversion of any waqf from the object for which it is designed; such a diversion is opposed to the Shariat. If, however, the object for which the waqf was created has ceased to exist, the question arises whether the income should not be diverted to an object which is a kin or similar to that object. For instances, if a particular school has ceased to exist, it will be quite legitimate to spend the money of the waqf on education generally. We recommend that the protector should be authorized to settle scheme for all waqfs in cases in which the objects for which they were created have ceased to exist. The protector, in settling the scheme, will be bound to have due regard to the intention of the waqf, as disclosed by the history of the waqf, and the object on which the amount has been spent. The protector should further be empowered to order immediate investments of surplus funds where they have accumulated owing to the inaction of the mutawalli.

The committee is of opinion that, as a general rule, the protector should not be charged with the duty of directly managing any waqf. This is liable to misunderstanding and misapprehension by the public. The aim and object of the protector ought to be to limit himself to the supervision and management of the waqf in general, by proper and suitable measures. This aim will be frustrated if the protector is burdened with an enormous amount of work of a miscellaneous character, which the direct management of the auqaf will involve. We, therefore recommend that the protector should not, as a rule, be charged with the management of waqfs. In some cases, however, it may be necessary for the protector to take over direct management of a limited number of waqf, as there may arise some exceptional cases in which his help may be of very great value, and his

intervention may be essential. In cases in which the office of the mutawalli has remained vacant for a considerable period, or in a case where there is an apprehension of squatters taking undue advantage of the mutawallis age or other infirmities, it seems to us necessary that on the protector should be conferred the power of taking over direct management of such waqfs. Of course, great tact and caution will be needed in the discharge of this duty, and the protector will consider with great circumspection and care whether it would be expedient for him to take the management himself. It is impossible for the committee to lay down hard and fast rules in the matter, and the protector will be guided by the necessities, of each case. We have, however, no hesitation in recommending that, when the safety of a large number of waqfs is at stake, and there is an evident danger of maladministration of that property, it is incumbent on the protector to make adequate and effective arrangements for direct management of such waqfs. The protector will, of course, consult the district waqf committee concerned before he takes any action in the matter.

The protector should be given a general power of supervision over all waqfs, and this power should include the right to demand an explanation from the mutawalli on points which the protector deems to be necessary. Again, the object of the new measure we propose will be defeated, unless the protector is invested with the power of entering and inspecting any waqf property which falls under his jurisdiction.

We have considered the advantages and disadvantages of a central advisory committee or board for the purpose of co-ordinating the work of the district advisory committee. While we feel the need of a machinery that will co-ordinate and corollate the work of the various committees, and bring them into one focus, in order that the needs of the community may be visualized as a whole, we are conscious of the fact that a central advisory committee will not prove useful in the existing circumstances. We feel that what is needed at the present juncture is urgent and prompt action on the part of an able, enterprising and resourceful protector. If a central committee is established now, there is a possibility of waste of energy and money. We must see how the machinery we have devised for the districts will work before we proceed further and establish a central committee. We have no hesitation in recommending that a provision should be made in the statute whereby the central advisory committee may be instituted, if and when necessary, after due inquiries and investigation by the Government in consultation with the district committees and other Muslim Organizations.

We recommend that two superintendents of auqaf, of the status of ^{Superintendent,} of tahsildars should be appointed for the purpose of inspecting and reporting on the waqfs of these provinces. The work of the protector will be so strenuous that we feel it will be quite impossible for him to discharge his duties, unless he is helped by persons who will be charged with the duty of touring the provinces and inspecting the work of each district. They will work in immediate subordination to the protector of the auqaf and will perform the duties assigned to them by the protector.

The protector will need adequate clerical help for the performance of his work. He will require a personal assistant ^{Office of the protector,} of the grade of Rs. 200—10--400. Besides, there will be a number of clerks in the office. It is not necessary for us to detail the number of clerks at this stage, as this will depend ultimately on his needs and requirements.

AUDIT.

The protector will have power to appoint auditors, who will be entrusted with the duty of auditing the accounts of the auqaf.

We have inquired into the work of auditors employed under the ^{Defects of the existing arrangement of audit.} Musalman Waqf Act of 1923, and have come to the conclusion that the system devised therein has not proved satisfactory. The fees charged by the auditors vary from district to district. There is no uniform method or system for the auditing of the waqf accounts. The district judges follow no definite rules regarding the remuneration of auditors, and in some districts the remunerations are as high as 5 per cent. of the income of auqaf, and in others as low as 1 per cent. Again the work of the auditors is perfunctory. It does not involve, either an expert investigation into the sources of the income of the waqfs, or a thorough inquiry into the receipts and other materials presented by the mutawallis to such auditors. The work is generally performed mechanically without complete to even partial inquiry into the sources of income, its amount and the objects on which it is spent. These are matters which many auditors deem to be beyond their purview, and their work is generally limited to a cursory examination of the receipts produced by the mutawallis. These statements should not be regarded as applicable to all auditors. We know of cases when auditors appointed by the judges have worked enthusiastically and have brought very serious evils to light. Some auditors appointed by the court have helped the community materially by their advice, help and suggestions.

On a number of instances it will, however, be true to say that auditing of accounts under the Act has proved a failure. We, therefore, recommend that the system in force should be abolished, and the protector should be empowered to appoint auditors, who

Qualification of auditor. should be chartered accountants, and should devote their whole time to this work. The auditors must be appointed after a very careful inquiry, and must be men of integrity and proved honesty. Upon their work will depend, to a large extent, the success or failure of the new scheme. They must have sufficient experience and should have knowledge of the peculiar and distinctive conditions of the auqaf of these provinces. They should be empowered to inquire if the receipt presented by the mutawallis are genuine, and if the expenditure has been really incurred. The number of auditors will depend upon the amount of work to be done. We do not, however, think that more than two auditors will be necessary in normal circumstances. In exceptional cases, and when arrears have to be cleared up, an additional auditor may be appointed for a limited period. The protector will divide the work between the two and will draw up rules and regulations for their guidance.

EXPENDITURE.

The committee is unanimously of opinion that all the expenses incurred in connection with reform suggested shall be borne by the Government, but in case the Government is not, on financial considerations, able to meet all expenditure, in order fully to effectuate the recommendations of the committee, the Government may have a contribution not exceeding 2 per cent. of the gross income levied on waqfs. In the opinion of this committee and the opinion of a vast majority of witnesses, whom it has consulted, this is not opposed to the cannons of the Shariat.

PENAL PROVISION.

In case of wilful disobedience of the protector's order by the mutawallis, the former will be authorized to impose a fine which may extend to Rs. 250 for the first offence, and to Rs. 1,000 for a second and subsequent offence. The order of the protector will be final.

INDEMNITY AND PROTECTION.

The committee recommends the following measures in order to secure indemnity and protection to the officers and the members of the committee for the efficient discharge of their duties.

That the protector, the superintendents, the auditors, and members of the committee constituted under the Act, or any rules or regulations made thereunder, shall, like other public officers, be protected in respect of anything done by them in their official capacity.

In the opinion of this committee no recommendations made by the committee should affect any charitable endowments or trusts the property of which is being administered by the Treasurer of Charitable Endowments, the Administrator General or the Official Trustee or is in charge, for the time being, of a receiver appointed by a court of competent jurisdiction. Lastly the committee strongly urges on the Government the desirability of immediate consideration of the reforms suggested by it, and hopes that it will bring into operation the much needed reforms as soon as possible. Reform in the administration of waqfs is now over due, and the community should not be made to wait any longer for those reforms.

The committee also thinks that as soon as reforms suggested by the committee have been accepted and put into force by the Government the order of the Government enforcing Act XLII of 1923 in these provinces and the relevant portions of Act XX of 1863 (Religious Endowments Act) and Act XIV of 1920 be withdrawn and repealed.

The committee was asked to make recommendations to the Government to secure better governance, administration and supervision of the Muslim public and charitable waqfs, private or semi-private waqfs, or any waqfs partaking of the nature of private waqfs, were excluded from the purview of the resolution passed by the Council, but the committee is impressed by the fact that there are some waqfs in these provinces of which a portion of the usufruct, or a portion of the property itself, is earmarked exclusively for public or charitable purposes. The committee is unanimously of opinion that its recommendations ought to apply to that portion of such waqfs.

A statement on the status of sajjadanashins managing waqf properties, and also receiving offerings from the visitors to the shrine, of which he is a sajjada, has been drawn up by the committee and is Appendix A of the report.

Finally the committee desires to record its obligations to the secretary of the committee, Khan Sahib Syed Zamin Husain, B.A., for the ready assistance which he has always given to the committee. It also commends the services of its clerical staff, Shah Anis Husain and Muhammad Jawad, for the willing and ready services they have rendered.

President.

Iqbal Ahmad.

Members.

- (1) Shafa'at Ahmad Khan.
- (2) Hafiz Hidayat Husain.
- (3) Muhammad Jamsheed Ali Khan.
- (4) Muhammad Obaidur Rahman .
- (5) Murtaza Husain Khan.
- (6) Agha Ali Khan.

Co-opted members.

- (1) Mirza Abid Husain.
- (2) M. A. Aziz.

July 29, 1931.

ABSTRACT OF COMMITTEE'S RECOMMENDATIONS.

1. Value and income of auqaf as so far ascertained described.
2. Main evils of the present day administration of auqaf described.
3. Musalman Waqf Act of 1923 found inadequate.
4. Committees of Advisory character should be formed in every district, called district waqf committees.

Constitution of the District Committees defined.

5. Each district committee to consist of 6 and 9 members according to the number of waqfs in each district. One-third of the members of each committee to be Shias, wherever possible. In committees consisting of six members one-third to be nominated by Government, in committees consisting of more than six, Government to nominate three members.

6. *President.*—The committee should be presided over by a senior Muhammadan Deputy Collector or a senior Muhammadan Judicial Officer.

7. Qualifications for the electors for the local waqf committee described.

8. Disqualifications for membership.

Functions of the District Committees.

9. (i) General supervision over auqaf in the district.

(ii) Statutory authority to inquire and report on the manner in which waqfs in the district are administered.

(iii) Scrutiny and passing of accounts submitted by the mutawallis.

(iv) Passing the budget or making recommendations to the protector for rejection or amendment of the same.

(v) Making recommendations to the protector on the diversion of income of waqf properties, when necessary or required.

(vi) Protection and supervision of all religious and charitable buildings not in charge of any mutawalli.

(vii) Recovery of waqf properties that have passed into the hands of trespassers.

10. The district committee's life to be five years.

Secretary to be elected by the committee and should be honorary.

11. District waqf committees to be divided into two sections, Shia and Sunni. All matters including budget of the mutawallis would first be submitted to the Shia and Sunni sub-committees by respective mutawallis and then scrutinized by the district committees. In districts where there are only two members of a sub-committee, co-option of a third member of that community will be allowed.

Protector.

12. Appointment of protector of the rank of a District Judge or Collector urged.

His duties (i).—To prepare record of rights of all waqf properties in the province.

(ii) To take suitable measures in all cases where the local committee does not approve of the budget.

(iii) To give sanction under section 92, Civil Procedure Code for institution of suits relating to waqf properties.

(iv) To institute or defend suits *suo moto* relating to waqf properties when necessary.

(v) To take measures for recovery of lost waqf properties.

(vi) To settle schemes of management in cases of those waqfs, the objects of which are not evident from any written instrument.

(vii) Not to directly manage any property unless absolutely necessary.

(viii) To possess power of general supervision over all waqfs, including power to demand explanations and entering upon and inspection of properties.

13. Appointment of the central committee not recommended.

14. There should be appointed two superintendents of auqaf of the rank of tahsildar for the purpose of inspecting and reporting on waqfs of the provinces in order to help the protector.

15. One personal assistant to the protector should be appointed.

Auditor.

16. Protector to appoint two wholetime auditors who will be chartered accountants.

Expenditure.

17. The Government to incur all expenses in connection with the reforms suggested but in case the Government is not, on financial considerations, able to meet all expenditures, the committee recommends to the Government to levy a contribution not exceeding 2 per cent. of the gross income of waqfs.

Penal provision.

18. In case of wilful disobedience by the mutawallis the protector will be authorized to fine the mutawallis up to Rs. 250 for the first offence and up to Rs. 1,000 for subsequent offence.

Indemnity and protection.

19. The protector, superintendents, auditors, members of the district committee to be protected like other officers in the discharge of their duties.

20. Recommendations of the committee not to effect endowments administered by the Treasurer of Charitable Endowments, Administrator General or Official Trustee or Receiver appointed by court.

21. Private waqfs not effected by the recommendations, but if a portion of the property or a portion of the usufruct is earmarked exclusively for public or charitable purposes, the recommendations to apply to that portion.

22. Statement on the status of sajjadanashin separately prepared as Appendix A. Sajjadanashins to be treated as ordinary mutawalli with regard to property dedicated to the shrine, but not with regard to any offerings made to them personally.

(Sd.) IQBAL AHMAD.

APPENDIX A.

STATUS OF SAJJADANASHINS.

In the questionnaire sent out by the committee, question No. 6 related to the control of the offerings of the dargah and other religious institutions. The idea underlying the question was to bring the offerings of the dargah, if possible, within the control of such body or bodies, which may be set up for the efficient administration and supervision of Muslim public and charitable waqfs. Advantage was taken during the course of inquiry to investigate into the question whether it was possible to separate the office of the mutawalli from that of the sajjadanashin of shrines such as Piran Kalyar, Rudauli, Salon and the like. There was considerable diversity of opinion among the witnesses examined on this point but the committee, after very careful consideration, has come to the conclusion that it is neither desirable nor necessary to separate the office of the sajjadanashin from that of the mutawalli in either of the dargahs. Any attempt in this direction would, at the present juncture, lead to a storm of opposition which would be difficult to meet, and may also be in direct contravention of the wishes of the waqifs.

But there is no doubt that there is considerable room for reform in the administration of these waqf properties under the control of sajjadanashins, and the best way to secure that reform would be to make the district committees exercise greater supervision over the affairs of the various shrines. The question here arises if this committee, that we have suggested, can be legally constituted, for it may be said that shrines and the property attached to them are on a different footing from ordinary waqf properties.

In part I of our report we have given a short history of waqf administration with special reference to British India.

The Ajmere properties relate to the first category of properties we have described in that part, and the great bulk of the properties in the United Provinces relate to the second category.

Indeed the committee would have been glad to suggest separate local committees being set up for each of these shrines in the United Provinces coming in the second category, but refrains from doing so, in order to avoid duplication of machinery and the complexities arising out of such duplication. If the district committees took living interest in the affairs of these shrines, there is no doubt that a speedy improvement will be effected. The committee is very strongly of opinion that, in order to preserve the sanctity attached to the office of sajjadanashin, all personal offerings made to him or at the dargah should not be treated as any part

of the waqf property, but should be treated as offerings made personally to the sajjadanashin or the khadims as the case may be. The position of the sajjadanashin, however, so far as it relates to the management of immovable property dedicated for the maintenance and use of the shrine, and all objects connected therewith, is that of a mere mutawalli and, therefore, he should not be allowed to take refuge behind the plea that the property in his charge does not partake of the nature of trust, pure and simple. No sajjadanashin should therefore be exempted from filing accounts of such property, both movable and immovable, in his charge, omitting of course, his presents and emoluments which are his personal property. The committee's conclusions therefore are :—

Firstly.—That it would be a mistake to separate the position of a sajjadanashin, from that of the mutawalli.

Secondly.—That the offerings either at the dargah or to the mutawalli, acting as sajjadanashin, should not be touched in any scheme for the administration of waqf properties.

Thirdly.—That the district committees should take living interest in the management of the affairs of each shrine.

Fourthly.—That the sajjadanashin, in the administration of all properties attached to the shrine for its use, should be subject to the same law and rules as any other mutawallis of any other public waqf property.

(Sd.) IQBAL AHMAD.

APPENDIX B.

List of auqaf.

Not printed.

APPENDIX C.

RESOLUTION No. 36A/IX—181.

LOCAL SELF-GOVERNMENT. DEPARTMENT.

Dated Allahabad, January 10, 1929.

On June 29, 1927, the Legislative Council passed a resolution recommending to the Government to appoint a committee to advise what steps should be taken for the better governance, administration, and supervision of Muslim Public and Charitable waqfs. The Governor acting with his ministers has considered the recommendation and is now pleased to appoint the following gentlemen to constitute a committee :—

President :

MR. IQBAL AHMAD, B.A., LL.B., Advocate, High Court, Allahabad.

Members :

- (1) DR. SHAFAT AHMAD KHAN, M.A., LITT. D., F.R.H.S., 25 Stanley Road, Allahabad.
- (2) K. B. HAFIZ Hidayat Husain, B.A., Bar-at-law, Civil Lines, Cawnpore.
- (3) Lt. Nawab MOHAMMAD JAMSHED ALI KHAN, M.B.E., Baghpat, Meerut.
- (4) Maulvi MOHAMMAD OBAID-UR-RAHMAN KHAN, Habib Ganj, Tahsil Atrauli, district Aligarh.
- (5) Nawab MURTAZA HUSAIN, Member of the Ex-Royal family of Oudh, Lucknow.
- (6) M. AGA ALI KHAN, Honorary Magistrate, Allahabad.

The Governor, acting with his ministers, is also pleased to authorize the committee thus constituted to co-opt two additional members, if the committee find this necessary to complete their inquiry.

The committee will advise the Government what steps ought to be taken to secure the better governance, administration, and supervision of Muslim Public and Charitable waqfs excluding those of a quasi-public or a private nature.

The committee will meet when convened by the President.

NOTE :—

1. Mirza Abid Husain Sahib, B.A., LL.B., Advocate of Lucknow and

2. M. A. Aziz, M.A., LL.B., Advocate, Allahabad, have been co-opted additional members of the committee under the authority delegated by the Government to the committee.

IQBAL AHMAD, B.A., LL.B.,

President.

K. S. SAIYED ZAMIN HUSAIN, B.A.,

Retired Deputy Collector and

Secretary,

Muslim Waqf Committee.

From

MR. IQBAL AHMAD, B.A., LL.B.,

Advocate and President of the

Muslim Waqf Committee,

57, George Town,

ALLAHABAD.

To

Dated Allahabad,

1929.

SIR,

I HAVE the honour to send herewith copies of the questionnaire prepared by the Muslim Public and Charitable Waqf Committee appointed by the Government under resolution No. 36A/IX-181, Local Self-Government Department, dated January 10, 1929, published on page 52 of part VIII of the *United Provinces Gazette*, dated January 12, 1929, to advise what steps should be taken for the better governance, administration and supervision of Muslim Public and Charitable Waqfs.

The committee desires to obtain full and reliable information regarding all Muslim Public Charitable and religious waqfs in the province, their sources of income, expenditure and the object for which such waqfs were created.

The committee is also anxious to know whether such waqfs are properly managed and whether the income derived from them is properly spent or wasted, misappropriated or carelessly spent. The committee would also like to know whether the object for which the property was endowed is secured. If any defects have come to your notice what measures would you suggest to remove them in order to ensure better management and secure the object for which the property was endowed?

The committee invites public opinion on the points covered by the questionnaire before making any recommendations, and trusts that you will favour us with your opinion. You may consult other responsible and influential persons whom you may consider suitable with a view to obtain reliable and useful information on all or any of these subjects.

The committee, may, if it thinks necessary, visit your district, to record evidence and to make inquiries relating to such waqfs. The committee would be grateful if you could very kindly supply it with the information desired not later than June 15, 1929.

The committee would be glad if you could be so kind as to let me know the names of such persons as are willing to give evidence on any or all of the points covered by the questionnaire enclosed herewith.

I have the honour to be,

Sir,

Your most obedient servant,

IQBAL AHMAD, B.A., LL.B.,

President, Muslim Waqf Committee,

ALLAHABAD.

QUESTIONNAIRE.

1. Are there in your knowledge, in your district, any Musalman Public :—

I.—Religious endowments or trusts.

II.—Charitable endowments or trusts.

III.—(a) Mosques. (b) Imambaras. (c) Sarais. (d) Wells (e) Colleges, schools and makhtabs. (f) Orphanages. (g) Karbalas. (h) Dargahs, Khanqahs and shrines. (i) Grave-yards. (j) Libraries. (k) Public Baths. (l) Tanks, for the maintenance of which any property is dedicated or which are maintained from waqf funds, if so, will you kindly give the following particulars of such endowments, buildings or institutions with such description of their situation, present condition and other matters, as you know or may be able to ascertain :—

(a) The name by which the waqf is known.

(b) The name and other details of the founder, grantor, or members of the society, if it be a registered body.

(c) Approximate date of the foundation and dedication, and its brief history.

(d) The object for which it was founded or dedicated.

- (e) Is it a Shia or a Sunni waqf?
- (f) The details and value of the endowed property.
- (g) Name and address of the present trustee or trustees or committees, if any, in charge of the trust.
- (h) Whether there are any trust-deeds or judicial decisions decrees creating, declaring or recognizing it as a pub waqf or it is recognized as such by users.
- (i) I. Its average annual income—
 - (i) From the property;
 - (ii) from the offerings, subscription and other presents;
 - (iii) from other sources.
- II. Its annual expenditure on—
 - (i) Up-keep, maintenance and repairs;
 - (ii) establishment and allowances;
 - (iii) religious services;
 - (iv) the amount set apart for religious purposes;
 - (v) for any purpose recognized by the-Musalman Law as public, religious or charitable purpose;
 - (vi) the amount actually spent for such purposes.

2. Have you any waqf under your direct management or are you in any way connected with the same? If so with which of them, and for what period.

3. Do you know personally of any trust or endowed property which is not properly governed, administered or supervised? Is the object for which the trust was created not secured, or the religious rites not duly observed? Is the income derived from such trusts either misappropriated, wasted or carelessly spent?

4. Do you think that the Muslim endowed properties or religious buildings or any portion thereof have been alienated and have passed into the possession of others as private property; if so,

- (a) when, by whom and for what purpose was this alienation effected?
- (b) Can you give a list of such alienated property or suggest how to recover it?
- (c) What measures are necessary to get the property back to its legitimate purpose?

(d) What legal and administrative machinery will be necessary to recover alienated properties and to protect the endowed properties from alienation in the future? Have the laws relating to such alienation proved effectual?

5. Do you think that Muslim endowments, trusts and other institutions stand in need of protection to prevent their misuse or to secure their preservation and their proper management?

If so, what measures, legislative or otherwise, would you suggest to secure these objects?

6. How should the offerings of dargahs and other religious institutions be controlled and supervised?

7. Have you come across any case in which a non-Muslim is in possession of a Muslim waqf?

8. Do you consider it desirable to create by statute the post of a Protector of Muslim Endowments to look after and to help in the governance, administration, supervision, and protection of such endowments; to receive and to examine their annual accounts of income and expenditure; and to be duly responsible for their audit and inspection, and generally to exercise in this respect all the powers necessary for the purpose.

(a) Will you associate with such a Protector an advisory board or committee nominated or partly elected by Muslim religious associations to help him in the administration of his department, with powers to appoint District Supervising Committee?

(b) Should the advisory board be divided into two sections (I) Shia and (II) Sunni, so as to ensure proper advice and guidance in accordance with the laws and usages of each section.

9. How are the funds, to meet the costs of various committees, that may be set up, as well as of the Protector and his department, to be provided?

10. Do you know of any waqf created by a non-Muslim for the benefit of the Muslim Public? If so, please give details of the same.

Is the income derived from such property spent on the object for which it was dedicated?

11. Would you give to the Central Board or to the Protector of the Muslim endowments the following among other powers :—

(a) Auditing of accounts;

- (b) the entry and inspection of the property;
- (c) sanctioning the budget and investment of income of waqfs;
- (d) general superintendence;
- (e) direct management where necessary;
- (f) To settle schemes of management;
- (g) right to institute and defend suits arising in connection with the endowed property.

12. Is it in your opinion necessary to maintain a consolidated record of rights for the entire province of all Muslim Public waqfs, and to arrange for its revision and publication from time to time? If so, to whom will you entrust this duty? Will the following particulars be necessary for this record :---

- (a) Qualifications required for the trustees.
- (b) Rules about the appointment and devolution of the office of the mutawalli?
- (c) Rights, duties and qualifications of other classes of persons rendering services to the trust of endowments.
- (d) Objects of the trust.
- (e) Sources of income and their estimate.
- (f) Customary services and celebrations.
- (g) Such other particulars as may be prescribed. What degree of authenticity would you attach to such a record?

13. Has the provision of the Indian Limitation Act adversely affected the reclamation of endowed properties wrongfully alienated? If so, what remedy would you suggest?

14. In a suit affecting the management of a Muslim Public Waqf property, do you consider it necessary that before the requisite permission for its institution is given, the Protector of the Muslim endowments should be called upon to report on the matter?

What other course will you suggest to put an effective check against vexatious and harassing suits brought by people maliciously disposed towards the mutawallis?

15. Would you like the Government to set up a Special Tribunal with a view to dealing, speedily and cheaply, with cases against trustees and trusts, the question of succession to endowed properties and trusts and alienation of trusts and charitable or religious properties and institutions?

Will you provide for an appeal against such decision to the High Court?

16. Do you think religious and charitable properties and institutions about which waqf deeds do not exist, or are not traceable owing to a lapse of time, should also be included in the list; and a record of rights should be maintained by the Protector of Muslim endowments and treated as waqf properties? Is it a fact that a number of Muslim graveyards, Imambaras, and other waqf property, though waqf, have by user been dedicated to the purpose without the execution of waqf deeds? Do they stand in need of protection and supervision by the Protector of Muslim endowments in the same manner as other endowed and trust properties?

17. What, in your opinion, are the chief defects of the Musalman Waqf Act of 1923, and other existing Acts relating to the Muslim Waqfs?

- (a) Have the District Judges exercised any, and if so, sufficient supervision over the account filed before them by the mutawallis?
- (b) Do you think that the fee charged by the auditors is reasonable? If not, can you suggest any fee which in your opinion should be charged?
- (c) Do you approve of the present system of auditing accounts? If not, what change will you suggest?
- (d) Are you in favour of the accounts of petty waqfs being audited by any person authorized in this behalf by general or special order of the District Judges or by such machinery as may be established later on.
- (e) Have the auditors appointed by the District Judges proved satisfactory?
- (f) If not, would you suggest any change in the present system?
- (g) Do you think that the mutawallis of small waqfs are put to great inconvenience by the present system of auditing accounts?
- (h) Do you think that the present system of auditing accounts has improved the administration of the endowed properties to any extent?
- (i) Do you think that the Musalman Waqf Act of 1923 should apply to all waqfs, whatever their income may be, or whether it should apply to waqfs yielding an income of Rs. 500 or less than that.

18. Do you think that the mutawallis of the waqf property for which a scheme has been prepared by any court in this province should submit account of such property before the District Judge in the same manner in which accounts of other Muslim Waqfs are submitted by mutawallis under sections 3 and 5 of the Musalman Waqf Act of 1923?

19. Have you come across any instance of genuine religious and charitable or other waqfs, the mutawallis of which have succeeded in evading the provision of the Act by persuading the District Judges to believe that the waqfs were of private or quasi-public character? What steps should be taken to recover the property from such mutawallis, and to get it declared as public waqf?

20. Have you any other suggestion to make for securing effective protection, supervision and administration of such properties, institutions and funds set apart for various purposes with special reference to the proper enforcement of the terms of waqf-nama, if any, in existence?

21. Are you prepared to appear before the committee to give your evidence, if so, what place would suit you?

N.B.—The witnesses should answer only those questions with which they are personally acquainted.

